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CITIFINANCIAL RETAIL SERVICES and
CITIBANK USA, NATIONAL ASSOCIATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH E. SMITH,)	Case No. C 06 2966 CW
)	
Plaintiff,)	
)	
vs.)	
)	
CITIFINANCIAL, CITIBANK USA, N.A.,)	INTERIM PROTECTIVE ORDER
TRANS UNION, L.L.C., EQUIFAX)	GOVERNING ASSERTIONS OF
INFORMATION SERVICES, L.L.C., and)	CONFIDENTIALITY AND TRADE
EXPERIAN INFORMATION SOLUTIONS, INC.,)	SECRET STATUS
)	
Defendants.)	

This matter has come before the Court on the stipulation of the parties. It appears that the parties anticipate discovery and production of documents which may be the proper subject of a protective order under FRCP 26(c), and that each of the parties will likely seek such protection for information to be produced in discovery. In order to assist in the timely completion of discovery without undue delay or unnecessary motion practice, the Court enters this Interim Protective Order Governing Assertions of Confidentiality and Trade Secret Status, which shall remain valid for 30 days from the date of this Order. At or before the expiration of the 30-day period, any party may move for entry of a further protective order, or the parties are free to stipulate to extend this Order.

1 Designation of Confidentiality.

2 A party responding to requests for production or interrogatories may – acting in good faith
3 – designate the responsive information to that discovery as "CONFIDENTIAL" (hereafter
4 referred to as "information designated as confidential"). That party shall make the designation by
5 producing the information and affixing a stamp conspicuously designating the information as
6 "CONFIDENTIAL." The inexcusable failure to designate the information as "CONFIDENTIAL"
7 waives any such designation and the material in question is no longer subject to the protection in
8 this Order.
9

10 Protection of Information Designated as Confidential.

11 Any *information designated as confidential* shall be protected as confidential under the
12 terms of this Order until such time as 1) the Court rules on the designation pursuant to a motion
13 by designating party, 2) the designating party waives its assertion of confidentiality expressly in
14 writing, or by failure to file a timely motion for a protective order. At that time, the materials
15 cease to be subject to the protections of this order and the information may be used in any fashion
16 consistent with other materials obtained through discovery.
17

18 Any information which is protected as confidential may only be used in this litigation
19 against the party producing the *information designated as confidential*. This information may
20 only be disclosed to
21

- 22 • Other attorneys appearing in this case.
- 23 • Staff, office personnel, consulting attorneys, experts, and consulting experts associated
24 with the attorneys appearing in this case.
- 25 • Witnesses.
- 26 • Deponents.
- 27 • The Court and its personnel.
- 28 • Court reporters engaged to transcribe the proceedings or discovery in this case.

1 Each person – excepting the Court and its personnel – who receives material subject to the
2 protections of this order shall be given a copy of this order prior to receiving the materials and
3 execute a copy of the acknowledgment attached Exhibit A to this order. No person apart from
4 counsel for the parties to this matter may be provided with any material designated as
5 "CONFIDENTIAL" unless that person has executed that acknowledgment.
6

7 Objections to the Designation of Confidentiality.

8 Within 14 days of receiving information designated as confidential, the receiving party
9 must either object to the designation, or else waive any objection to the designation. A party who
10 objects in good faith to the designation shall, within that 14 day period, serve objections to the
11 designation and request in writing a conference to resolve the conflict. The party asserting the
12 objection is responsible for making good faith efforts to arrange that conference. If the parties
13 cannot resolve the objections to the designation, the party asserting the designation of
14 confidentiality shall move, within 14 days of the conclusion of the conference(s) to resolve the
15 issue, for a protective order under Rule 26(c), showing good cause, specific harm arising from the
16 disclosure, and setting forth reasonable restrictions which it requests on the discovery sought.
17 The failure to move for a protective order within that 14 day period waives the designation.
18

19 Use of Confidential Materials in Dispositive Motions and At Trial

20 If any *information protected as confidential* is submitted in connection with a dispositive
21 motion or at trial pursuant to this Order, the information ceases to be protected as confidential as
22 set forth above, unless the party moves to seal the Court's record and proceedings and continue
23 the protections of this order.
24

25 A party who intends to use any information which is protected as confidential in
26 connection with a dispositive motion or response to a dispositive motion must provide notice of
27 that intent 7 days before submitting any such information to the Court, and identify, as much as
28

1 reasonably possible, the specific information which that party intends to submit. A party
2 receiving such notice may within that 7 days request that the party submitting the documents do
3 so under seal. The failure to provide that notice by a party seeking to use information waives the
4 right to use such information in connection with a dispositive motion and any portions of any
5 court document which contain such information may be stricken. The party intending to file
6 confidential documents, upon receiving the request by the designating party, shall file the
7 confidential documents under seal.
8

9 A party who intends to use any information which is designated as confidential in
10 connection with a trial must identify the document in the joint final pretrial order, along with a
11 separate list of the information which is protected as confidential which that party will seek to
12 submit. A party receiving such a list may within that 7 days request that the party submitting the
13 documents do so under seal.
14

15 At the conclusion of the litigation, upon demand by a designating party, the receiving
16 party shall return all confidential documents, together with all copies made, to the designating
17 party.
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1 The Court will retain jurisdiction over the parties for purposes of enforcement or
2 modification of this order.

3 SO ORDERED this 2nd day of October, 2006. **But see L.R. 79-5.**

4 

5 Hon. Claudia Wilken,
6 United States District Court Judge

7 Stipulated To By:

8 Kemnitzer, Anderson, Barron & Ogilvie

Severson & Werson

9 By:
10 Andrew J. Ogilvie
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16 Musick, Peeler & Garrett LLP

17 By:
18 Donald E. Bradley
Attorneys for Defendant
19 Trans Union LLC

Exhibit A to Proposed Interim Protective Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH E. SMITH,

Plaintiff,

vs.

CITIFINANCIAL, CITIBANK USA, N.A.,
TRANS UNION, L.L.C., EQUIFAX
INFORMATION SERVICES, L.L.C., and
EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendants.

) Case No. C 06 2966 CW

)
) ACKNOWLEDGMENT OF RECEIPT OF
) INTERIM PROTECTIVE ORDER
) GOVERNING ASSERTIONS OF
) CONFIDENTIALITY AND TRADE
) SECRET STATUS

I acknowledge that I have read and that I understand the Interim Protective Order

Governing Assertions of Confidentiality and Trade Secret Status entered in this action and agree to abide by its terms and conditions. As a condition to access by me to documents designated by the parties to this action as "CONFIDENTIAL," I agree to submit to the jurisdiction of the United States District Court for Northern District of California in connection with any alleged breach by me of the Interim Protective Order Governing Assertions of Confidentiality and Trade Secret Status. I also understand that any violation of the Amended Protective Order by me or any one under my control may subject me to penalties for contempt of court.

Dated: _____, 2006

Printed name and address below signature